

Terms and Conditions | Skywalker Distribution

1. SCOPE OF APPLICATION

All products supplied and services offered by Skywalker Distribution Services to the customer shall be governed strictly and exclusively on the basis of these terms and conditions of sale. These terms and conditions supercede any terms and conditions stipulated by the customer irrespective of that stipulated on a customer's order. Acceptance of any quotation by the client is acceptance hereof.

2. THE GOODS

Goods are defined as the subject matter of any order placed by the customer and accepted by Skywalker Distribution in writing.

3. PRODUCT QUALITY, SPECIMENS & SAMPLES

3.1

Unless otherwise specifically agreed between the parties in writing, the quality of the goods is determined strictly and exclusively in accordance with Skywalker Distribution's product specifications, as updated by Skywalker Distribution from time to time.

3.2

The description in respect of the properties and composition of specimens and samples are binding on Skywalker Distribution only insofar as they have been specifically agreed in writing by Skywalker Distribution to define the quality of goods.

3.3

Skywalker Distribution does not warrant the suitability for any specific purpose of the goods, and in so far as permitted under the Consumer Protection Act, any product specifications or other information provided by Skywalker Distribution shall not relieve the customer of the need to conduct his own investigations and tests as to the suitability and application of the goods for any particular purpose and the customer shall have no claim against Skywalker Distribution if the goods are provided in accordance with the product specifications thereof but are not suitable for any particular purpose not specifically agreed to in writing by Skywalker Distribution before the goods were supplied.

4. PRICE

The purchase price of any goods supplied or rendered by Skywalker Distribution shall be the price reflected in a written quotation sent by Skywalker Distribution to the customer, or provided to the customer by a Skywalker Distribution Representative. Skywalker Distribution reserves the right to change its prices from time to time as it, at its discretion, deems fit.

5. ORDERS

5.1

Orders placed by the customer for Skywalker Distribution's goods shall be made by the customer provided to a Skywalker Distribution Representative, in person, in writing or by phone and email.

5.2

Orders shall constitute offers to obtain Skywalker Distribution's goods in question at the prevailing prices of Skywalker Distribution and shall be capable of acceptance by Skywalker Distribution through the delivery of goods on a Skywalker Distribution invoice.

5.3

When goods are delivered in accordance with 5.2 above, payments relating to the deliveries shall be paid 30 (thirty) days from date of statement if such account facility is requested and signed by the customer, by the end of the month in which the sale and delivery takes place, as agreed and signed by the customer, or Cash on Delivery if customer has such an agreed facility with Skywalker Distribution.

5.4

Should Skywalker Distribution at its own election and with agreement from the customer or at the customer's request agree to engage a carrier to transport goods to the customer, such carrier shall be the customer's agent and Skywalker Distribution shall engage the carrier on fair, just, and reasonable terms and conditions. The customer indemnifies Skywalker Distribution against all and any demands and/or claims and/or liability which may arise or be made against Skywalker Distribution by the aforesaid carrier or which may be claimed by the customer out of the transportation of the goods by the aforesaid carrier.

5.5

The customer will be liable for payment of all fees, charges, expenses and the like due to the said carrier in respect of the transport of the goods to the Customer as set forth in 5.4.

5.6

If the customer fails to take delivery of the goods ordered due to a direct /indirect act/omission by the customer, its employees or agents, then the risk in the goods shall immediately pass to the customer and the customer shall be liable to pay Skywalker Distribution the reasonable costs of storing, insuring and the handling of goods, until delivery takes place.

6. PAYMENT

6.1

Payment in full is to be made 30 (thirty) days from date of Skywalker Distribution's statement, unless specifically otherwise agreed to in writing, such as an EFT payment via the website, Cash on Delivery in the event of a COD account facility, or by month end in which such goods were sold to the customer, and as agreed in customer's credit application with Skywalker Distribution.

6.2

In all cases where the customer uses a postal banking, electronic or similar service to effect payment, such services shall be deemed to be agent of the customer.

6.3

6.3.1

Should any amount not be paid by the customer on the due date, then the whole amount in respect of all purchases by the customer shall immediately become due, owing and payable irrespective of the dates when the goods were purchased and the customer shall be liable to pay interest in respect of the amounts unpaid as at the due date at the compound rate of 2% above the prime rate per annum (as defined in 6.3.2).

6.3.2

The term "prime rate" shall mean the prime overdraft lending rate charged by Skywalker Distribution's bank as certified, in the event of a dispute, by any manager of such bank whose appointment and authority it shall not be necessary to prove and whose decision shall be final and binding.

6.3.3

In the event that any agreement between the customer and Skywalker Distribution is governed by the National Credit Act ("NCA"), then the interest payable by the customer shall be the interest rate provided for in the NCA.

6.4

The customer shall not be entitled to claim set off or deduction in respect of any payment due by the customer to Skywalker Distribution for goods supplied.

6.5

Skywalker Distribution may allocate all payments made by the customer at the discretion of Skywalker Distribution.

7. CREDIT FACILITIES

7.1

The customer understands that Skywalker Distribution's decision to grant credit facilities to the customer is at the sole discretion of Skywalker Distribution.

7.2

Skywalker Distribution reserves the right to withdraw any credit facilities at any time without prior notice, and the nature and extent of such facilities shall at all times be in Skywalker Distribution's sole discretion. In addition, Skywalker Distribution may request that the customer provide adequate security in respect of any credit facility.

8. OWNERSHIP & RISK

8.1

Notwithstanding that all risk in and to all goods sold by Skywalker Distribution shall pass on delivery (as set forth in Article 9) and irrespective of whether Skywalker Distribution may not be the distributor of the goods, ownership of all goods sold and delivered shall remain vested in Skywalker Distribution until the purchase price has been paid in full. In the event of a breach of these terms and conditions by the customer, or if the customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against it within 7 days of the date of judgment or changes the structure of its ownership, Skywalker Distribution shall be entitled to take possession of the goods without prejudice to any further rights vested in Skywalker Distribution, and is hereby irrevocably authorized to enter upon the customer's premises to take possession of such goods without an order of court.

8.2

The customer shall have no claim against Skywalker Distribution for damages caused due to loss of profits or otherwise occasioned by the removal of goods from the customer's premises as aforesaid notwithstanding that such removal was effected without an order of court.

8.3

Goods in possession of the customer bearing Skywalker Distribution's name, trademarks and labels, shall be deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be repossessed by Skywalker Distribution as set forth in paragraph 8.1.

8.4

The customer shall fully insure the goods purchased from Skywalker Distribution against loss or damage, until the purchase price has been paid in full by the customer. Pending payment to Skywalker Distribution for goods purchased, all benefits in terms of the insurance relating to such goods are ceded to Skywalker Distribution.

8.5

Skywalker Distribution shall be entitled to identify its goods merely by way of packaging and for other distinguishing features. Skywalker Distribution shall not be obliged to identify the goods by way of serial numbers or any other form of intricate identification.

8.6

In the event of customer processing the goods before payment is made in full, Skywalker Distribution shall be considered a manufacturer and shall directly acquire sole title to the newly produced product. If the processing involves other materials, Skywalker Distribution shall acquire joint title to the newly produced product in the proportion to the value of the goods, as invoiced.

8.7

Before payment is made in full and upon request by Skywalker Distribution, the customer shall provide all necessary information regarding the inventory of the goods. Furthermore, upon request by Skywalker Distribution, the customer shall identify on the packaging Skywalker Distribution's title of ownership of the goods and shall notify its customers of assignment of its claims to Skywalker Distribution.

9. DELIVERY

9.1

Delivery shall be affected as specifically agreed between the parties. General commercial terms shall be interpreted in accordance with the INCOTERMS in force on the date the agreement is concluded.

9.2

Skywalker Distribution shall have the right to defer delivery under this Agreement or any other supply agreement entered into with the customer if and for as long as the customer fails to pay any invoice under one or more of the supply agreements entered into with Skywalker Distribution when due.

10. DAMAGE IN TRANSIT

Notice of claims arising out of damage in transit must be lodged by the customer directly with the carrier within the notification period specified in the contract of carriage and Skywalker Distribution shall be provided with a copy of the notice.

11. BUYER'S COMPLIANCE WITH LEGAL REQUIREMENTS

The customer shall comply with all laws and regulations regarding import, transport, storage and use of the goods.

12. LIABILITY

12.1

Skywalker Distribution shall not be liable to the customer in any manner in the event of impossibility or delay of Skywalker Distribution to supply due to circumstances entirely beyond the control of Skywalker Distribution, such as but not limited to those described below, and where Skywalker Distribution informed the customer as soon as it became aware of impossibility or delay in the supply.

12.2

Skywalker Distribution shall not be liable to the customer for goods delivered in good order and thereafter damaged in the possession of the customer due to improper care or storage, use or application, contrary to any instructions and/or warnings provided or available for the goods, or any other direct or indirect act or omission by the customer, its employees or agents resulting in the goods being damaged or causing harm to any person or damage to any property.

12.3

Skywalker Distribution shall not be liable for any harm caused by the goods to a third party if the harm caused to the third party is due to the customer, its employees or agents providing inadequate instructions or warnings in respect of the goods to the third party.

13. SECURITY

If there are reasonable doubts as to the customer's ability to pay, or if the customer is in default of its payment obligations, Skywalker Distribution may, subject to further claims, revoke agreed credit periods and make further deliveries dependant on the provision of sufficient security by the customer.

14. NEGOTIABLE INSTRUMENTS

Acceptance of any negotiable instrument by Skywalker Distribution shall not be deemed to be a waiver of Skywalker Distribution's rights under this agreement. In relation to a cheque furnished by the customer, the customer waives the right to insist on notice of dishonour or protests being given to it in the event that the cheque is dishonoured.

15. CUSTOMER'S RIGHTS REGARDING ALLEGEDLY DEFECTIVE GOODS

15.1

The customer must notify Skywalker Distribution in writing, or by in person in the event of a Skywalker Distribution Representative being present of any

15.1.1 unsuitable goods within 1 (one) week of delivery of the goods; or

15.1.2 allegations of defective goods.

15.2

If the goods are defective and the customer has duly notified Skywalker Distribution as set out in 15.1 above, then Skywalker Distribution has the right to either remedy the defects or supply the customer with replacement goods, without accepting any liability arising out of such defective good.

16. RETURNED GOODS

The goods sold by Skywalker Distribution are only returnable, at Skywalker Distribution's sole discretion or where the incorrect goods have been supplied, the goods are unsuitable for a purpose stated by the customer in writing as per 15.1 above, substantially as intended in terms of Section 20 of the Consumer Protection Act, or in terms of Clause 15 above, and in such an instance the following shall apply:

16.1

All goods returned must be complete, clean, sealed, undamaged and in their original packaging.

16.2

The value of credit or refund for any returned goods will be calculated as per original invoice.

16.3

Skywalker Distribution must be notified of relevant, packing slip and batch numbers before any claim will be considered.

16.4

All goods are to be returned at the customer's expense and the risk in the goods remains with the customer until the goods are received by Skywalker Distribution.

17. BREACH

Should the customer fail to make any payment of any amount due on due date, or breach any of the other terms and conditions contained herein (all of which are deemed material) or commit an act of insolvency, or allow a judgment to be entered against it, or be provisionally or finally liquidated or sequestrated, or in the opinion of Skywalker Distribution has a cash flow problem or other financial or commercial difficulty which may in any way whatsoever negatively impact upon the ability of the customer to comply with any of its current or future obligations in terms of this or any other contract of the customer with Skywalker Distribution, then Skywalker Distribution without prejudice to and in addition to its other legal remedies shall be entitled to cancel this contract or any unfulfilled part thereof; or to claim payment of the full price or the balance thereof as the case may be, and failing such payment, Skywalker Distribution is specifically authorised to repossess all unpaid for goods in the possession of the customer.

18. LEGAL PROCEEDINGS

18.1

Regardless of the place of execution or performance under these terms and conditions or domicile of the customer, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and constructed under and in accordance with the laws of the Republic of South Africa.

18.2

The customer hereby submits to the jurisdiction of Magistrates Court, notwithstanding that the amount of Skywalker Distribution's claim may exceed the jurisdiction of the Magistrates Court.

18.3

A certificate issued and signed by any member or manager of Skywalker Distribution, whose authority need not be proved, in respect of any indebtedness of the customer to Skywalker Distribution or in respect of any other fact, including the fact that such goods were sold and delivered, shall be prima facie evidence of the customer's indebtedness to Skywalker Distribution and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods.

18.4

The Customer's physical address as given on the front page of this document, or provided to Skywalker Distribution in the form of a completed credit application or customer information form, shall be recognized as the customer's address for receipt of notices and execution of legal documents for all purposes in terms of this agreement whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature. Skywalker Distribution chooses its address as Unit 10, JVR Business Park, 82 Broadlands Road, STRAND, 7140.

18.5

All legal costs, including attorney/own client costs, tracing agent's fees and collection charges which may incur in taking any steps pursuant to any breach by the or enforcement of these terms and conditions.

19. ALTERNATIVE DISPUTE RESOLUTION

19.1

Where a statutory or accredited ombudsman has jurisdiction in terms of the Consumer Protection Act, all disputes falling under the jurisdiction of said ombudsman shall be referred to the ombudsman for a recommendation.

19.2.

Where there is no ombudsman as contemplated in 19.1, and the dispute is one falling under the Consumer Protection Act, an Alternative Dispute Resolution Agent referred to therein shall be appointed to mediate the dispute or, by agreement between the customer and Skywalker Distribution, the dispute will be referred to Arbitration as contemplated in 19.3 to 19.6 below.

19.3

Skywalker Distribution and the customer may agree to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall be final and binding on both Skywalker Distribution and the customer and shall only be subject to Review by the High Court if one of the established grounds for review exist and under no circumstances shall the arbitrator's decision be appealed to the High Court or any other body.

19.4

When Skywalker Distribution and the customer have agreed to refer the matter to arbitration in terms of 19.3 above, in the interests of a speedy and cost effective resolution of the dispute, a short form or expedited form of arbitration shall be adopted and the rules of the arbitration shall not require that any party prepare and file any documents in a form identical to or similar to that of Court pleadings and Heads of Argument. This informality shall not detract from the onus to commence and the burden of proof which shall follow the High Court practice in this respect.

19.5

The arbitrator must be a person agreed upon by the parties and shall at least hold a tertiary qualification in the technical field of the dispute, except where the dispute relates predominantly to the interpretation of this agreement or any law, regulation, or by-law, in which case the appointed arbitrator shall have at least 10 years practical experience as an attorney in private practice or as an advocate of the High Court. If the disputes relates mainly to accounts or is accounting related, a registered auditor with no less than 10 years' experience is required.

19.6

Failing the agreement on the appointment of an arbitrator or the rules of the arbitration, an arbitrator must be appointed by the Arbitration Foundation of South Africa, who shall then finally resolve the dispute in accordance with the rules of the Arbitration Foundation of South Africa.

20. GENERAL

20.1

This contract represents the entire agreement between Skywalker Distribution and the customer and shall govern all future contractual relationships between Skywalker Distribution and the customer and shall also be applicable to all debts which the customer may owe to Skywalker Distribution prior to the customer's signature, and or in person agreement, hereto.

20.2

The Customer acknowledges that it is aware that Skywalker Distribution's dealers and sales persons have no authority to vary these terms and conditions of sale, and Skywalker Distribution assumes no liability and shall not be bound by any statements, warranties or representations made by such dealers and or sales persons, save as expressly stated in writing and signed by a manager or a director of Skywalker Distribution duly authorized thereto whose names are available on request.

20.3

No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, shall be of any force or effect unless reduced to writing and signed by, the customer, and a director of Skywalker Distribution. No agreement purporting to obligate Skywalker Distribution to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions, shall be of any force or effect, unless reduced to writing and signed by the customer, and a duly appointed representative of Skywalker Distribution.

20.4

The customer acknowledges that no warranties, representations or guarantees have been made by Skywalker Distribution or on behalf of Skywalker Distribution which may have induced the customer to sign this agreement.

20.5

No relaxation or indulgence which Skywalker Distribution may give at any time in regard to the carrying out of the customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of Skywalker Distribution's right in terms of this agreement.

20.6

The customer shall not cede its rights nor assign it's obligation in terms hereof without Skywalker Distribution's prior written consent thereto.

20.7

Skywalker Distribution shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this application for credit facilities including all terms and conditions to any third party with prior notice to the customer.

20.8

The customer undertakes to notify Skywalker Distribution in writing within a period of 7 (seven) days of any change of address, change in ownership, name change or any changes in information as set out in this agreement and shall likewise inform the customer of any such changes affecting Skywalker Distribution.

20.9

The headings in this document are included for convenience only and are not to be taken into account for the purpose of interpreting this agreement.

20.10

Each of the terms herein shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then the term shall be severable and shall not affect the validity of the other terms.

21. FORCE MAJEURE

To the extent any incident or circumstance beyond Skywalker Distribution's control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of Government), reduces the availability of goods from the plant from which Skywalker Distribution receives the goods such that Skywalker Distribution cannot fulfill its obligations under this agreement, and Skywalker Distribution has informed the customer accordingly and without delay, Skywalker Distribution shall:

(i) be relieved from its obligations under this agreement to the extent that Skywalker Distribution is prevented from performing such obligations and

(ii) have no obligation to procure goods from other sources. If the aforementioned occurrences last for a period of more than 3 (three) months, Skywalker Distribution is entitled to withdraw from the agreement without the customer having any right to compensation.

22. DISCLOSURE OF PERSONAL INFORMATION

22.1

The customer understands that the personal information given in the credit application form is to be used by Skywalker Distribution for the purpose of assessing the customer's credit worthiness. The customer confirms that the information given is accurate and complete the customer further agrees to update the information supplied, in order to ensure the accuracy and completeness of the information given, failing which Skywalker Distribution will not be liable as a result of any inaccuracies or lack of completeness of information.

22.2

Skywalker Distribution has the customer's consent at all times to contact and request information from any persons, credit bureaus or business, including those mentioned in the credit application form and to obtain any information relevant to the customer's credit assessment, including but not limited to, information regarding the amounts purchased from the suppliers per month, length of time the customer has dealt with such supplier, type of goods or services purchased and manner and time of payment.

22.3

The customer agrees and understands that information given in confidence to Skywalker Distribution by a third party on the customer will not be disclosed to the customer.

22.4

The customer hereby consents to and authorises Skywalker Distribution at all times to furnish credit information concerning the customer's dealings with Skywalker Distribution to a credit bureau and to any third party seeking a trade reference regarding the customer in his dealings with Skywalker Distribution.

23. NATIONAL CREDIT ACT

In the event that the National Credit Act ("the NCA") applies to any transaction between Skywalker Distribution and a customer, then-

23.1

If any provision of these terms and conditions are in conflict with the NCA, such conflicting terms and conditions shall not apply;

23.2

Skywalker Distribution and the customer shall conclude an agreement in compliance with the NCA and Skywalker Distribution shall not be obliged to deliver any goods or provide any services until such agreement is signed.

23.3

The costs and charges which Skywalker Distribution is entitled to recover from the customer shall be the maximum allowed by the NCA and Skywalker Distribution shall be obliged to comply with the NCA before instituting any legal proceedings against the customer.

24. CONSUMER PROTECTION ACT

Skywalker Distribution recognizes that its customers may be consumers under the Consumer Protection Act and Regulations and in so far as any transactions are protected under the Consumer Protection Act, any clause in respect of such transaction in terms of these terms and conditions shall be interpreted in order to give effect to the customer's rights. Likewise, the customer recognizes and confirms that in so far as they are not in conflict with the Consumer Protection Act and Regulations, the Customer shall perform its obligations under these terms and conditions.

25. NOTICES

25.1

Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee as stipulated in 25.2 and 25.3 below.

25.2

Any notice to a party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved).

25.3

Any notice to a party delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery.

28. COMPLIANCE

In performing its obligations under this Agreement the Customer undertakes to comply with all applicable laws and regulations (in particular, but not limited to, relating to antitrust and anti-corruption).

29. TERMINATION

This agreement shall commence on the day of acceptance of the Purchase order and shall continue indefinitely until the order is completed and all payment has been received.